



Expires – September 30, 2010

Prevention of Consultant Selection Conflicts of Interest

I. BACKGROUND

Chapter 10 “Consultant Selection” of the Local Assistance Procedures Manual (LAPM) provides guidance to local agencies that request federal or state funds to reimburse Architectural and Engineering (A&E) consultant costs. The purpose of this Office Bulletin is to make revisions to Chapter 10 that will eliminate and prevent potential and perceived conflicts of interest of the selection panel members, and local agency consultants working in management positions in the selection of A&E consultants.

II. POLICY

The policy and requirements stated in this Office Bulletin are to be immediately implemented by Caltrans, primarily the District Local Assistance Engineer (DLAE) staffs, and the local agencies that are involved in the procurement and selection of A&E consultants primarily for Federal-aid funded A&E contracts for transportation projects, but also, as applicable, in the procurement and selection of A&E consultants for State funded A&E contracts.

III. PROCEDURE

- A. Section 10.8, of the LAPM is revised as shown in Attachment 1 to this Office Bulletin.
- B. Exhibit 10-T “Panel Member Conflict of Interest and Confidentiality Statement” as shown in Attachment 2 to this Office Bulletin is added to Chapter 10 of the LAPM.
- C. Exhibit 10-U “Consultant in Management Position Conflict of Interest and Confidentiality Statement” as shown in Attachment 3 to this Office Bulletin is added to Chapter 10 of the LAPM.

IV. APPLICABILITY/IMPACTS

Applicable to all local agency Federal-aid A&E contracts and, as appropriate, to State funded A&E contracts for transportation projects.

Those local agencies that are procuring and selecting A&E consultants for their Federal-aid or State funded transportation projects will need to have each selection panel member complete Exhibit 10-T “Panel Member Conflict of Interest and Confidentiality Statement” prior to A&E consultant selection. After completion of Exhibit 10-T by the selection panel member, the local agency will need to have their Contract Administrator review and sign the completed Exhibit 10-T to confirm that there is not a conflict of interest with any of the selection panel members. After the completed exhibits have been reviewed and signed by the Contract Administrator, the completed exhibits are to be placed in the contract file.

Exhibit 10-U “Consultant in Management Position Conflict of Interest and Confidentiality Statement” is applicable to and will need to be completed by local agencies that are using consultants in management positions and will use Federal-aid A&E contracts or State funded A&E contracts for their transportation projects. Those local agencies will be required to have the consultant in the management position complete Exhibit 10-U. Upon completion, Exhibit 10-U is to be reviewed and signed by the supervisor of the consultant in the management



position, and then a copy submitted to the DLAE either before or with the request for project authorization. The DLAE is to review the completed Exhibit 10-U, either concur or non-concur as to the conflict of interest and eligible reimbursement, sign and return a signed copy to the local agency.

This change impacts Chapter 10 “Consultant Selection” of the LAPM as noted in Attachments 1, 2 and 3 of this Office Bulletin.

Recommended: _____ **March 22, 2010**
Eugene Shy, Committee Chair Date

Approved: _____ /S/ **March 22, 2010**
Mohsen Sultan, Chief Date
Office of Policy Development and Quality Assurance

Attachments:

- 1.) Attachment 1 – Revisions to Chapter 10.8 of the Local Assistance Procedures Manual
- 2.) Attachment 2 – Exhibit 10-T “Panel Member Conflict of Interest and Confidentiality Statement”
- 3.) Attachment 3 – Exhibit 10-U “Consultant in Management Position Conflict of Interest and Confidentiality Statement”



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Revisions (in italics) to Chapter 10 of the Local Assistance Procedures Manual (LAPM)

10.8 MISCELLANEOUS CONSIDERATIONS

RETAINING A CONSULTANT AS AN AGENCY ENGINEER

A local agency may retain qualified consultants on its staff in professional capacities such as agency consultant engineers, ~~or~~ architects, *or public agency officials such as City Engineer (or equivalent)*. The agency consultants can be an individual or a firm providing professional and/or management services.

Eligibility for federal and/or state reimbursement for ~~these~~ *local agency engineering (or equivalent)* services requires the following:

- Compliance with the selection procedures specified in this chapter.
- Existence of a contract between the local agency and the consultant specifying the *local agency engineering* services to be performed.
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer.
- *Completion by the consultant designated as an agency engineer of the conflict of interest for public agency officials "Form 700" as required by State law.*
- *For a State funded or Federal-aid project, completion of an "Exhibit 10-T Panel Member Conflict of Interest and Confidentiality Statement" form by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered.*
- *For a State funded or Federal-aid project, a local agency consultant in a management role shall not:*
 - *Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or a sub-consultant to a proposing firm.*
 - *Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a sub-consultant. This would include, but not limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.*
 - *Apply for or receive reimbursement of Federal-aid funds for the local agency's Federal-aid project if either of the foregoing has occurred. However reimbursement for the construction contract portion of the project will still be allowed provided all other Federal-aid requirements have been met.*

- *For a State funded or Federal-aid project, completion of a “Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement” form by all consultant engineering staff in management positions that exercise authority over the A&E Selection Panel pertaining to the specific selection process and the firms being considered.*
- *A completed “Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement” form shall be submitted to the District Local Assistance Engineer (DLAE) by the local agency concurrently with submitting the request for the funding authorization of an Architect Engineer contract which will contain Federal or State funds.*
- *Selection of consultants for management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates and awarded within the last ~~three (3)~~ five (5) years and if extended, only annually by contract amendments approved by the local agency Board of Supervisors, City Council etc.*

If engineering services for a project are within the scope of the services described in the retained consultant’s agreement, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for Federal and/or state reimbursement for these services require a new consultant agreement to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the Request for Proposal (RFP), or Request for Qualifications (RFQ) shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants are procured with State or Federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 49 CFR §18.36(b)(2) “...maintain a contract administration system....”; and (3) “...maintain a written code of standards.... No employee, officer or agent of the ...subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved....”
- Subparagraph of 23 CFR §172.9(d) “Consultant in management roles,” which requires that if a local agency has or intends to have a consultant in a management role (*except as the designated public official, City Engineer or equivalent, as provided for under the terms of the local agency contract*), the local agency shall receive approval from Caltrans. In addition, any Federal-aid projects designated as High Profile Projects, ~~approval~~ may also ~~be needed~~ approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.)

CONSTRUCTION ENGINEERING SERVICES

[The portion of Chapter 10.8 under this heading remains unchanged]



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Exhibit 10-T
“Panel Member Conflict of Interest and Confidentiality Statement”

RFP/RFQ PROCUREMENT NUMBERS: _____

PROJECT NAME: _____

APPLICABILITY: Applicable to local agency consultant procurements which will contain Federal or State funds in the consultant contract.

- ☐ I am an employee of the local agency that is responsible for this procurement.
- ☐ I am an employee of a consultant under contract to the local agency that is responsible for this procurement but I am not in a management position with the local agency.
- ☐ I have a personal, financial, or business interest in past employment activity or a personal relationship regarding the firms (including sub-consultants) that are the subject of this evaluation. A brief description is provided on the back of this form.
- ☐ I certify that I have no current contractual relationship with any of the firms (including subconsultants) that are the subject of this evaluation.
- ☐ I certify that I have no personal or financial interest and no present or past employment activity or personal relationship or prior contractual relationship which would be incompatible with my participation in this solicitation process and I am fully able to give full, fair and impartial consideration to all proposals/bids as an appointee to the related evaluation.
- ☐ I certify that I have read **49 CFR 18.36(b)(3)** below and I agree not to participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. **Note:** Caltrans is the Grantee and the local agency is the sub-grantee.

49CFR 18.36(b)(3)

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of



nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

- ☐ I fully understand and agree to immediately disqualify myself as soon as I am aware of a conflict of interest that may compromise my fair and impartial consideration of the proposals/bids.
- ☐ I certify that I will hold in the strictest confidence all bids, proposals, correspondence, memoranda, working papers, or any other media which has any bearing on, or disclose any aspect of, any respondent or potential respondent to the RFP/RFQ above. I will not discuss the evaluation process with anyone no involved in the evaluation process until its completion.
- ☐ I fully understand that it is unlawful for a person to utilize any organization name or auxiliary organization information, which is not a matter of public record, for personal gain.
- ☐ I fully understand that any violation of the above is a basis for disciplinary action, up to and including termination and/or referral to the appropriate authorities for further investigation.
- ☐ I am aware that the following firms and sub-consultants/sub-contractors have submitted proposals in response to the above referenced solicitation:

List firms including sub-consultants/sub-contractors:

1. _____
2. _____
3. _____
4. _____
- etc. _____

Date: _____

Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____



CONTRACT ADMINISTRATOR'S REVIEW

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and have determined, according to the information provided, that this individual:

☐ does not have a conflict of interest and can participate in the "Selection Panel"

☐ does have a conflict of interest and cannot participate in the "Selection Panel"

Date: _____

Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

Distribution: Original – Local Agency Consultant File



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Exhibit 10-U
“Consultant in Management Position Conflict of Interest and Confidentiality Statement”

RFP/RFQ PROCUREMENT NUMBERS: _____

PROJECT NAME: _____

APPLICABILITY: Applicable to local agency consultants in management positions that exercise authority over the Architect & Engineering Selection Panel from which the local agency has or plans to have one or more consultant contracts containing Federal or State funds.

☐ I am an employee of a consultant under contract to the local agency that is responsible for the procuring and administering of one or more consultant contracts containing either Federal or State funds.

☐ I am in a management position with the local agency, my title is listed below and I have attached my duty statement.

☐ The procedures followed to procure and execute the contract, between the local agency and the consulting firm of which I am employed, comply with all Federal and State requirements. Also this contract has a specific beginning and ending date.

☐ I hereby certify as follows:

1. I will not directly or indirectly participate in, manage, or oversee any consultant selection procurement process in which the consulting firm of which I am employed is competing as a consultant or sub-consultant.
2. I will not directly or indirectly influence any employee, staff member, or other individual participating in any consultant selection procurement process in which the consulting firm of which I am employed is as a consultant or sub-consultant.
3. I will not directly or indirectly participate in, manage, or oversee any local agency contract that is with the consulting firm of which I am employed, regardless of whether the involvement of my employer in the contract is as a consultant or sub-consultant. Among other things, this includes my not being involved in managing the work; and not approving changes in the schedule, scope, deliverables or invoices.
4. I understand that if I am involved in any local agency contract that is with the consulting firm of which I am employed, in violation of 1. or 2. above, that local agency contract will no longer be eligible for Federal or State reimbursement because of my involvement.

☐ I certify that I have read **49 CFR 18.36(b)(3)** below and I agree not to participate in selection, or in the award or administration of a contract supported by Federal or State funds if a conflict of interest, real or apparent, would be involved. **Note:** Caltrans is the Grantee and the local agency is the sub-grantee.



49CFR 18.36(b)(3)

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

☐ I fully understand that it is unlawful for a person to utilize any organization name (i.e. local agency) or auxiliary organization information, which is not a matter of public record, for personal gain.

☐ I fully understand that any violation of the above could be a basis for ineligibility of reimbursement of State and/or Federal project funds.

Date: _____

Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

REVIEW BY SUPERVISOR OF CONSULTANT IN MANAGEMENT POSITION

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and will ensure:

☐ that the foregoing named local agency consultant who is under contract and in a management position with our local agency, abides by the foregoing terms and conditions.



- ☐ that should the foregoing named local agency consultant, who is under contract and in a management position with our local agency, violate any of the foregoing terms and conditions, the Caltrans DLAE will be notified and such violation will be considered a breach of ethics and could be a basis for ineligibility of State and/or Federal project funds.

Date: _____

Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

REVIEWED/CONCURRENCE BY DISTRICT LOCAL ASSISTANCE ENGINEER

I have reviewed the foregoing “Conflict of Interest and Confidentiality Statement” and Supervisor’s statement.

- ☐ Based upon the foregoing, I concur that the consultant, who is under contract and in a management position with the local agency, does not appear to present a conflict of interest. The local agency and the consultant should be considered eligible for Federal and State reimbursement.
- ☐ Based upon the foregoing, I do not concur as I believe that the consultant, who is under contract and in a management position with the local agency, does appear to present a conflict of interest.
- ☐ The consultant’s time is not considered eligible for either Federal or State reimbursement.
- ☐ The local agency is not considered eligible for either Federal or State reimbursement.

Date: _____

(DLAE) Signed: _____

Name: _____

Distribution: 1) Copy to: DLAE for each Federal/State funded project
2) Copy to be returned to Local Agency by DLAE with signature